

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,

Plaintiff,

v.

CIV. S-02-0018 GEB JFM GGH

ORDER

ESTATE OF HERBERT S. MCDUFFEE,
JR., DECEASED; et al.,

Defendants

On Friday, August 18, 2006, the undersigned met with the “defendant” parties (includes third party defendants) to discuss further proceedings within the settlement process order. To date, the vast majority of the remedial investigation has taken place. Final aspects of that investigation are currently under discussion between DTSC and the defendant parties.

The Settlement Expert (Clayton) has detailed a cost estimate for finishing up the investigation as well as penciling out the costs for the risk analysis/feasibility assessment. See Draft Cost Estimate of August 15, 2006. Because of cost sensitivity to the settlement process, Clayton will undertake further discussion with DTSC with an aim to reduce, if possible, costs of activities which are not indispensable to an adequate investigation. The costs predicted from the

1 outset of this process have been significantly exceeded by actual costs of work performed, despite
2 Clayton's and the Oversight Committee's efforts at cost containment, because of facts discovered
3 at the site during initial stages of the investigation and the need to have a comprehensive (but
4 sensible) investigation.¹

5 The funds supplied by the parties participating in the settlement process with
6 which to pay Clayton for further work have been essentially exhausted. The request for a further
7 \$407,041 to perform the further work referenced above must be approved by a two-thirds vote of
8 the parties participating in the settlement process. While some of that total may be reduced by
9 further discussions with DTSC, the parties should vote on the proffered figure given, and
10 adjustments can be made later. The assessment per party would be in the neighborhood of
11 \$15,000 to \$16,000.

12 Accordingly, the defendant parties who are participating within the settlement
13 process shall transmit their vote to the Oversight Committee with respect to funding the new
14 monetary request referenced above. Such vote shall be transmitted no later than August 28, 2006.
15 The Oversight Committee shall report the results of the vote by e-mail to the undersigned.

16 The undersigned will not approve further "investigative" money requests absent
17 extraordinary circumstances set forth on the record. The undersigned expects the risk analysis/
18 feasibility assessment to be performed within the cost estimates for those functions.

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25 The undersigned has been impressed with Clayton's professionalism and the work of the
26 Oversight Committee in shepherding Clayton's work. Clayton has endeavored to produce a quality
product with a minimum of cost, and the Oversight Committee has spent countless hours attempting
to ensure that result. All parties have benefited because of the logistical work of the Oversight
Committee.

1 The first settlement hearing to apportion costs and determine oversight costs to be
2 paid, if any, is scheduled for April 17, 2006, at 9:00 a.m. All parties participating in the
3 settlement process, including DTSC, shall be present. The court will issue further orders in
4 respect to this conference.

5 IT IS SO ORDERED.

6 Dated: August 21, 2006

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8 s/s Gregory G. Hollows
9 GREGORY G. HOLLOWS
10 United States Magistrate Judge
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